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1 June 1978

Honorable Edward P. Boland, Chairman
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We have been in contact with your Chief Counsel, Mr. Michael O'Neil, to discuss our concerns with certain provisions in H.R. 12598, the "Foreign Relations Authorization Act, Fiscal Year 1979," which has just been passed by the House. Mr. O'Neil has requested that we submit the Director's views formally to your Committee.

Title V of H.R. 12598, entitled "Science, Technology and American Diplomacy," includes provisions apparently designed to consolidate policy control of international activities involving science and technology under the Secretary of State.

Briefly, in our view, the provisions in Title V present problems because the underlying terminology--"science and technology" activities, initiatives and agreements--is not defined and, as a result, the provisions could be fairly construed as applying to activities involving intelligence activities conducted by the CIA concerning, for example, intelligence and internal security services of foreign governments insofar as such activities might involve "science or technology" matters. While we have no quarrel with the concept that national foreign intelligence activities should be fully consistent with foreign policy objectives, this legislation could be construed to require unnecessary proliferation of detailed information regarding intelligence relationships with foreign governments within the Executive Branch and the Congress. Intelligence relationships with foreign governments, including relationships involving highly sophisticated and technologically advanced collection systems, are among the most sensitive of intelligence sources and methods, and proliferation of information concerning those relationships could not only jeopardize cooperation with respect to particular activities, but also jeopardize cooperation in general, and valuable intelligence could be lost.

In discussions we have had with congressional and Executive Branch officers familiar with this legislation, we have been informed that intelligence activities are not intended to fall within the terms of Title V. Although the report on this bill filed by the International Relations Committee contains language in the analysis of subsection 503(c) to this effect, we believe the report language fails to address fully our concerns that the scope of the title is not clear. This lack of clarity, coupled with specific language elsewhere in the title, presents further problems; for example:

1. Subsection 503(a) requires that the Secretary of State, on behalf of the President and in consultation with the Director of the Office of Science and Technology Policy, ensure that the Secretary is fully informed and consulted before any agency undertakes any initiative involving science and technology with respect to any foreign government "notwithstanding any other provision of law." (Emphasis added.) The phrase "notwithstanding any other provision of law" could be interpreted as superseding the Director's statutory responsibility to protect intelligence sources and methods from unauthorized disclosure under the National Security Act of 1947, as amended, as to obligations imposed by the proposed section.

2. Subsection 503(b) requires submission of an annual report to the Congress on the continuation of existing international programs, activities and agreements, including descriptions of them, an analysis of foreign policy implications, the scientific and technological benefits (and, according to the report, dangers), the adequacy of funding for and administration of such activities, and personnel requirements and standards for training of Federal employees who participate in such activities. This provision could be interpreted as reordering Executive Branch responsibilities for formulating policies concerning intelligence relationships with foreign governments insofar as they involve science and technology, and for coordinating such intelligence relationships. Under section 1-601 of Executive Order 12036, such responsibility and authority currently resides with the Director of Central Intelligence.

3. Subsection 504(a) establishes that the Secretary of State has primary responsibility for coordination and oversight with respect to all international scientific and technological activities of the U.S. Government, including, according to the report, "agency-to-agency agreements for cooperation in highly ... sensitive areas of science or technology." This language could be viewed as shifting responsibilities to the Department of State and, in the Congress, to the Department's oversight committees. Insofar as intelligence matters could be construed to fall within the scope of Title V, absent clarification of its scope, we believe subsection 504(a) could alter what, in our view, is the appropriate oversight mechanism for intelligence matters--namely, the Intelligence Committees.

Although subsection 503(c) incorporates language protecting against the public disclosure of intelligence information as a result of the provisions in that subsection, this language addresses only the issue of public disclosure and not the issues discussed above. We believe these science and technology provisions paint with too broad a brush, and that intelligence activities should be specifically excluded from coverage.

While the companion bill in the Senate, S. 3076, does not contain science and technology provisions similar to those in Title V of H.R. 12598, there are other provisions in the Senate bill which are of concern to us. These include provisions amending the so-called "Role of the Ambassador Legislation" (22 U.S.C. §2680a) and the so-called "Case/Zablocki Act" (1 U.S.C. §112b).

We would welcome the opportunity to discuss these matters with you in an effort to ensure that the Director's equities are not adversely affected by the legislation. Time has not permitted securing advice from the Office of Management and Budget as to the relationship of this report to the Administration's program, although we have sent a report to OMB and are discussing these matters with that Office.

Sincerely,

SIGNED

Frank Carlucci

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